



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: CNR
For the landlord: OPR-DR

Introduction

The tenant filed an Application for Dispute Resolution on February 2, 2021 seeking an order to cancel the Ten-Day Notice to End Tenancy For Unpaid Rent (the “10-Day Notice”).

On February 7, 2021 the landlord applied for an order of possession of the rental unit. The landlord’s application here was filed initially as a Direct Request. The matter proceeded by way of participatory hearing because this Direct Request application cannot be considered by that method when there is a cross-application by the tenant in place.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on April 30, 2021. Both parties attended the hearing, and each was provided the opportunity to present oral testimony and make submissions during the hearing. After review of documentation at the start of the hearing, the tenant acknowledged receipt of the evidence prepared by the landlord. The landlord questioned whether they had received what the tenant prepared here, to which the tenant provided that they prepared a specific courier-branded envelope to the landlord on April 15. Given that the landlord was unsure of delivery, I informed both parties that any gaps in the documentation would be addressed by the party who prepared it and submitted it into this branch. In this way, the party would have the opportunity to provide fulsome oral testimony to close any gap with my specific queries. On this basis, the hearing proceeded.

Issue(s) to be Decided

Is the tenant entitled to an order to cancel the 10-Day Notice, pursuant to s. 46 of the *Act*?

If the tenant is unsuccessful in their Application, is the landlord entitled to an Order of Possession of the rental unit, pursuant to s. 55 of the *Act*?

Background and Evidence

The copy of the tenancy agreement provided by the landlord shows that these parties signed the agreement between them on January 31 and February 2, 2020. At that time, the rent amount was \$750, and in April 2020 the rent increased to \$768. The tenant was at this rental unit from 2012 onwards, and after this landlord became the owner in 2019, they formed a new agreement with the tenant here in early 2020.

There is an addendum to the agreement that specifies: "Any late payment of rent or any outstanding bills is subject to a \$25 late payment fee." Additionally: "Rent and any outstanding bills must be paid by the first of each month."

Both parties provided a copy of the 10-Day Notice, signed by the landlord on February 1, 2021. The landlord provided their "Proof of Service" document to show that they served this document to the tenant in person on that date. A witness signed that document to indicate they observed the transaction at 3:33 p.m. on that date.

On page 2 of the document the landlord provided that the tenant failed to pay rent in the amount of \$1,975 that was due on February 1, 2021.

In the hearing, the landlord provided that the tenant was in arrears on rent payments, from December 2020 onwards. Specifically, this was \$368 owing from December 2020 and the full \$768 amount for January and February 2021.

In the tenant's version of events, they did pay rent from November 2020 onwards, in the amount of \$782 for each of November, December, and January 2021. They described how on January 4 the landlord demanded an additional "deposit" for the following month of February, and when the tenant gave \$600 toward that, the landlord would not accept it. The tenant stated they received no receipts from the landlord; these are necessary

for the monthly reimbursement of their rent from the Ministry of Social Development and Poverty Reduction.

The landlord submitted that what the tenant stated was untrue. They provided updated account statements to the tenant during this time. They stated they could not issue receipts to the tenant when payments were not made.

In the landlord's evidence, documents show the following:

- The amount owing as of a statement dated March 24 2021 and April 2021 shows payment of \$400 in December 2020, then No payment for January and a February 28 payment of \$770 – this leaves balance of \$1,979 as of February 1, the day the landlord issued the 10-Day Notice
- the landlord's Direct Request Worksheet shows the amount of "1904" as "Amount listed for unpaid rent on the 10 Day Notice to End Tenancy" at that specific prompt

In the tenant's evidence there appears:

- a February 15, 2021 statement of arrears from the landlord – this shows amount of \$1,959 as of the date the landlord issued the 10-Day Notice – in their Application the landlord referred to this as an error, which was fixed before they gave it to the tenant
- a February 15, 2021 message to the tenant gives this same amount \$1,959, with the request to pay by e-transfer specifically
- a message to the tenant dated March 1, 2021 informs the tenant that "It is common accounting practice for payments to go towards the oldest debt."

Analysis

The *Act* s. 46(1) states that a landlord may end a tenancy if rent is unpaid on any day after the rent is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the tenant receives the notice.

The *Act* s. 46(4) states that within 5 days of receiving a Notice a tenant may pay the overdue rent, thereby cancelling the Notice, or dispute it by filing an Application for Dispute Resolution. Here, I find the 10-Day Notice was served on February 1, 2021, and the tenant applied to cancel it on February 2, 2021 within the legislated timelines.

I find the record shows it was not clear that the tenant was aware of the outstanding balance as of the date the landlord issued the 10-Day Notice. Primarily for this reason, I cancel the 10-Day Notice and declare it of no force or effect.

The 10-Day Notice indicates there is \$1,975 owing in rent as of that particular day. What the landlord provided in the hearing for three separate months -- \$768, \$768 and \$368 -- adds up to \$1,904. On their "Direct Request Worksheet" the landlord provided the amount of \$1,904 is that "Amount listed for unpaid rent on the 10 Day Notice to End Tenancy." These are inconsistent pieces of information.

This is a difference of \$71. It is not known whether the amount indicated on the 10-Day Notice includes the \$25 monthly fee for three months of rent. Strictly speaking, late fees are not rent amounts or utility amounts owing.

Also, in the landlord's evidence, the amount of \$1,979 appears as the amount owing. This *would seem* to be the amount inclusive of late fees; however, this amount also differs from what appears on the 10-Day Notice.

I find by February 15 the landlord was still adjusting to correct the amount in their accounts. The spreadsheet and correspondence to the tenant shows a previous payment of \$420 occurring in December 2020. The landlord informed the tenant that \$1,959 was thus owing as of February 15, 2021. With no record of any payment made by the tenant within the two weeks of receiving the 10-Day Notice, this is a different amount than that which the landlord informed the tenant was outstanding on February 1, 2021 on the 10-Day Notice. This then reverted to \$400 paid on the landlord's subsequent statements in March and April.

With all these points, I find the landlord did not disclose the correct amount owing by the tenant. I find it more likely than not that the amount \$1,975 as it appears on the document is not correct.

The landlord issued the document on a day of rental payment. This was at 3:30 p.m. as shown on the landlord's "Proof of Service" document. Strictly speaking, this precludes the tenant from making any rent payments owing, when it is unknown whether the tenant would have provided the February rent payment later that same day. This did not appear in the tenant's record or testimony; however, it is a valid consideration when the tenancy agreement or the addendum do not specify a *precise time* that the tenant must pay their rent. This cannot be assumed to be end of business day, or for that

matter even mid-to-late afternoon. Stated thus, it appears the landlord included the February rent amount before the full opportunity for the tenant to pay that February rent had passed.

Finally, and in the alternative, there is the matter of the 10-Day Notice itself. The *Act* s. 52 states:

- 52** In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,
 - (d) . . . state the grounds for ending the tenancy,
. . . and
 - (e) when given by a landlord, be in the approved form.

In this hearing, both the landlord and the tenant submitted a copy of the 10-Day Notice document. This did not include the third page of the document. The document on page 2 contains the explicit instruction: "Landlord must sign page 1 and give the tenant all pages of this Notice." On page 3 are instructions to the tenant regarding next steps after being served the document. This third page is not in the evidence, with no record the landlord served it to the tenant.

In this matter, the onus is on the landlord to provide they have a valid reason to end the tenancy. The landlord spoke to this in their oral testimony; however, there is not sufficient evidence to show the 10-Day Notice is valid and compliant with the provisions of section 52(e). Similarly, there is no evidence to show the third page of the document was presented to the tenant in proper fashion. The tenant's evidence was also missing page three; based on this, I find it more likely than not that the third page was not served to the tenant.

Without the third page, I find the document does not comply with section 52. As stated in s. 46(3): "A notice under this section (i.e. non-payment of rent) must comply with section 52." I find the document does not comply with the requirements set out in s. 52.

Conclusion

For the reasons outlined above, I order the One-Month Notice issued on February 1, 2021 is cancelled and the tenancy remains in full force and effect.

The landlord's cross-Application for an Order of Possession is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: May 3, 2021

Residential Tenancy Branch